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## **OLR Bill Analysis**

### **sHB 5309**

#### ***AN ACT CONCERNING ABANDONED VESSELS.***

##### **SUMMARY:**

This bill replaces existing procedures for seizing and disposing of abandoned vessels and establishes a new administrative process for doing so.

The bill replaces current law, which (1) allows an officer to seize an abandoned vessel and deliver it to a person for storage; (2) permits that person to sell it if it is unclaimed after 60 days; and (3) specifies that sale proceeds cover storage costs and are then paid to the owner, or the state if unclaimed. The bill instead generally allows certain public or private parties to begin a process to take ownership of an abandoned vessel after 45 days if it is not claimed by the owner, a party with a lien, or a person with an appropriately filed or recorded security interest.

The bill makes abandoning a vessel a violation punishable by a fine of between \$300 and \$500, unless the abandonment occurs during, and because of conditions that caused, a declared emergency.

It also deems waste oil, fuel, antifreeze, or other hazardous materials stored on an abandoned vessel to be household hazardous waste for disposal purposes if the materials are (1) incidental to the vessel's operation and maintenance and (2) removed to prepare for the vessel's storage, removal, or destruction. This treats the materials in the same way as waste generated during routine household activities and exempts them from the law's hazardous waste requirements.

EFFECTIVE DATE: January 1, 2015

##### **PRESUMPTION OF VESSEL ABANDONMENT**

###### ***Abandoned Vessel***

The bill generally expands the circumstances under which a vessel is considered abandoned.

The law prohibits abandoning a vessel on state waters or on someone's property without consent. Under current law, a vessel is presumed abandoned if it is left on (1) state waters not moored, anchored, or fastened to the shore and unattended for more than 24 hours or (2) someone else's property without consent for more than 24 hours.

The bill retains these presumptions but gives former tenants who leave a vessel on property they rented, leased, or occupied up to 90 days before it is considered abandoned. It also adds that a vessel is presumed abandoned if it is:

1. left at a mooring for more than 60 days since the last full payment was received;
2. left at a storage, repair, or other commercial facility for more than one year since the facility received the last full payment;
3. found during a declared emergency either in a (a) public right-of-way hindering access to the right-of-way or public utilities or (b) location or condition creating an imminent danger to public safety or the environment; or
4. left on state waters for more than 24 hours and not properly registered, whether or not it is attached.

### ***Vessel Owner***

Current law presumes that the last owner of record when the vessel was abandoned is the person who abandoned it or caused its abandonment. The bill retains this presumption, but specifies that the owner is the person recorded with the government agency that registered the vessel, unless the owner provides the DEEP commissioner with sufficient evidence showing a transfer of vessel ownership occurred before the abandonment. Vessels documented with the United States Coast Guard under maritime or admiralty law

are considered registered with the Coast Guard.

## **ABANDONED VESSEL PROCEDURE**

### ***Current Law – Provisions Eliminated***

The bill eliminates existing procedures regarding abandoned vessels and establishes new ones. It eliminates current law that:

1. allows any officer authorized to enforce the state's boating laws to take an abandoned vessel into custody and store it;
2. protects an officer from liability for damage to a vessel when in his or her custody;
3. provides a lien for (a) charges incurred by the officer to take custody of the vessel and (b) storage charges of the owner or keeper of a marina or other location where the vessel is stored;
4. allows the owner or keeper to sell the vessel to recoup the storage charges if it is stored for at least 60 days;
5. requires notice of the sale to be (a) provided to the vessel owner and the DEEP, motor vehicles, and transportation commissioners five days before the sale or (b) published in the newspaper at least three times starting at least five days before the sale if the owner is unknown; and
6. requires (a) paying the sale proceeds, minus the amounts due to the marina owner or keeper and the officer who took the vessel for storage, to the vessel owner if claimed within one year of the sale and (b) unclaimed funds to escheat to the state.

### ***Who Can Begin the Process***

Under the bill, only a party with standing, or its designated agent identified in writing on the notification of abandoned vessel (see below), may begin the abandoned vessel process. The bill establishes the following parties as those with standing:

1. the owner of property where the abandoned vessel came to rest or was fastened, unless the vessel is removed from the property

- and turned over to a lienholder, person with an appropriately filed or recorded security interest, harbormaster, police department, municipality, or agent of the state;
2. a harbormaster, police department, municipality, or agent of the state that agrees to accept or process an abandoned vessel;
  3. an emergency responder, including a responding utility or person or firm (a) contracted by the government to provide emergency services and (b) responding to a bona fide emergency during or after an emergency declared by the President or governor; and
  4. a licensed motor vehicle dealer who is authorized by law to tow or transport vehicles or a professional marine salvager, when the dealer or salvager is employed by any of the above parties.

The bill allows these parties to recover from the person who abandoned the vessel the expenses they incur because of the vessel's abandonment. It generally relieves any person from civil liability for damage to an abandoned vessel if the person acts in good faith and without malice when processing, storing, or moving the vessel according to the bill's provisions. (But the bill makes lienholders and persons with appropriately filed or recorded security interests liable for damage when removing abandoned vessels, see below).

### ***Determining Interested Parties of Abandoned Vessels***

***Vessels Registered in Connecticut.*** The bill requires the DEEP commissioner to notify the secretary of the state by electronic mail when he receives a notice of an abandoned vessel (see below) that is or was registered in Connecticut. He must (1) describe the vessel and (2) identify the owner's name, if known, as recorded with the Department of Motor Vehicles (DMV).

The secretary of the state must (1) inform the commissioner, within 10 business days of receiving the notice, of any security interest or commercial lien against the vessel and (2) notify all lienholders and people with appropriately filed or recorded security interests that the

vessel is deemed abandoned.

Under the bill, if an abandoned vessel is documented according to federal marine or admiralty law, the commissioner must reasonably try to (1) determine if liens or appropriately filed or recorded security interests exist against the vessel and (2) notify the lienholders and people with appropriately filed or recorded security interests of the vessel's status and location.

***Vessels Registered in Other States.*** If an abandoned vessel is registered in another state, the bill requires the DEEP commissioner to notify by electronic mail the other state's registering agency and agencies responsible for recording liens and security interests of the abandoned vessel. Under the bill, the commissioner must provide the agencies 15 business days to (1) return information on the vessel's owner and anyone who registered or recorded a lien or security interest or (2) intervene in the abandoned vessel process. If these agencies identify lienholders or people with appropriately filed or recorded security interests, the commissioner must make reasonable attempts to notify them.

The bill relieves the commissioner of any further obligation to identify or contact the last owner of record, lienholders, or people with appropriately filed or recorded security interests if the other state's registering agency fails to provide the contact information or intervene in the process within 15 business days of receiving the notice.

For vessels documented under federal maritime or admiralty law, the commissioner may use information from the documentation to identify the last owner of record.

### ***Process for Disposing of Abandoned Vessels***

The bill establishes a new procedure to dispose of abandoned vessels. Abandoned vessels with current documentation under federal maritime or admiralty law are subject to the initial notice and labeling procedures, but not the 45-day abandoned vessel period or transfer of ownership provisions. Federal law generally governs these vessels.

**Notice of Abandoned Vessel.** The bill requires a party with standing to file a “notice of abandoned vessel” with the DEEP commissioner to start the abandonment process. The notice must be notarized and filed on forms the commissioner prescribes. It may be filed in person, by mail, or by paid delivery service, and the filing fee is \$20. But for filings occurring within 45 days after the end of an emergency declared by the governor that results in widespread vessel displacement, no filing fee or notarization is necessary.

The bill requires that a notice of abandoned vessel be prepared and submitted to the commissioner for each abandoned vessel. It includes vessels (1) documented with the U.S. Coast Guard under federal maritime or admiralty law or (2) relocated to an abandoned vessel holding area by people or agents acting in a relief or emergency capacity.

**Stolen or Missing Vessels.** Under the bill, when the DEEP commissioner receives the filing, he must determine if the vessel is reported as stolen or missing. If so, the police department with which the report was filed must (1) take the vessel into custody or (2) arrange for the return of the vessel to its owner at the expense of the person who abandoned it.

**Internet Notice.** The bill requires the DEEP commissioner to post information about the report of the abandoned vessel (presumably the notice) online on a publicly accessible abandoned vessel website. The information must be sufficient to identify the vessel and include, if known, (1) the vessel’s registration number, make, model, length, and color; (2) the town and water body nearest to where the vessel was abandoned; and (3) instructions for contacting the commissioner.

The law generally prohibits public agencies from disclosing the residential addresses of certain public employees (e.g., judges, firefighters, law enforcement officers). But during a declared emergency and until a vessel abandoned during the emergency is no longer abandoned, the bill allows the commissioner to publish any abandoned vessel owner’s name and town of record as obtained from

vessel registration records.

**Certified Letter.** The DEEP commissioner must send a certified letter to the person who abandoned the vessel, who is presumed to be the owner, if the person can be identified. In the letter, he must (1) identify the vessel, (2) explain the consequences of abandonment, and (3) provide instructions for retrieving the vessel.

The bill allows the commissioner to waive this certified mail requirement if he establishes contact with the person by electronic mail or some other communication method he determines suitable.

**Label.** The bill requires the DEEP commissioner to provide the party with standing with a water resistant adhesive label to be immediately affixed to the abandoned vessel. The label must (1) advise that the vessel is being processed according to the abandoned vessel procedure and (2) provide instructions for contacting the commissioner to get more information or intervene. It must be placed in a prominent location and in a way that is visible to an approaching party. The bill requires placing this label also on abandoned federally documented vessels, although these vessels are exempt from the transfer of ownership provisions of the abandonment process.

**45-Day Abandoned Vessel Period.** Under the bill, a 45-day abandoned vessel period starts when the first attempt to deliver the certified letter to the person who abandoned the vessel occurs. For unregistered vessels, the period begins when the DEEP commissioner posts information about the vessel on the publicly accessible abandoned vessel website.

The bill allows the commissioner to suspend the period for up to six months for just cause if he states in writing on the website the (1) reason for the suspension and (2) elements needed to resume the 45-day period.

**Owners Reclaiming Vessels.** The bill gives a person who abandoned a vessel until the last day of the abandoned vessel period to remove the vessel from the property or possession of the party with

standing, if he or she contacts the DEEP commissioner. But it allows the person to ask for the abandoned vessel period to be suspended if there is just cause. The bill makes the person liable for any property damage caused by removing the abandoned vessel.

If the person who abandoned the vessel fails to remove it, the commissioner must (1) cause the vessel's registration to be cancelled and (2) issue a notice of assumed ownership to the party with standing (see below).

***Liens and Security Interests.*** The bill requires any party with a lien or a person with an appropriately filed or recorded security interest against an abandoned vessel that is filed with the secretary of the state to seek a writ of attachment from the Superior Court or else their lien or security interest is discharged. This must be done (1) at the party's or person's expense and (2) before the issuance of a notice of assumed ownership to the party or person from DEEP (but the DEEP commissioner issues the notice to the party with standing, as defined above, and a lienholder or person with a security interest is not a party with standing). Under the bill, the secretary must record the discharge when the commissioner notifies her that a notice of assumed ownership was issued to the party with standing.

Similarly, the bill allows lienholders and people with appropriately filed or recorded security interests on abandoned vessels filed with a federal agency to also seek a writ.

Under the bill, lienholders or people with security interests that do not file or record their lien or interest and those that file or record them in another state are unable to seek the writ. But the bill allows lienholders and people with appropriately filed or recorded security interests, whether or not they have the writ, to request a suspension of the procedures for the removal, transport, or storage of an abandoned vessel. It makes lienholders and people with appropriately filed or recorded security interests who take custody of abandoned vessels liable to the parties with standing for damage to the vessels incurred during the vessels' removal.



Under the bill, an abandoned vessel in the custody of a lienholder, person with an appropriately filed or recorded security interest, or an agent of the lienholder or person, is no longer abandoned and must be sold according to existing law regarding liens, presumably the portions of this chapter on vessel liens.

**Notice of Assumed Ownership.** The bill requires the DEEP commissioner to issue a “notice of assumed ownership” to the party with standing on the day after the abandoned vessel period ends if the person who abandoned the vessel fails to (1) contact him or (2) remove the vessel. (Lienholders or people with security interests may also obtain custody before the period ends, see above). The notice must be sent by certified mail with a copy sent by electronic mail to the DMV commissioner.

For abandoned vessels subject to commercial liens filed with the secretary of the state, the DEEP commissioner must electronically send a copy of the notice of assumed ownership to the secretary. The bill requires her to consider the notice of assumed ownership to (1) terminate all liens and security interests against the vessel and (2) satisfy the law’s requirements for lien removal.

Once the notice of assumed ownership is issued, the party with standing is considered the abandoned vessel’s owner and the original document is prima facie evidence of ownership. The bill makes the notice prima facie evidence of a transfer of ownership, by law, from a titleholder to the party with standing. The notice is deemed sufficient documentation to establish the ownership interest or right to acquire the interest. The bill requires the DMV commissioner to then cancel the vessel’s existing registration and note the ownership transfer to the party with standing in the vessel’s registration record, if it exists and is accessible. For vessels registered by some other agency, the DMV commissioner must electronically notify the agency of the ownership transfer.

## **COMMITTEE ACTION**

Environment Committee

Joint Favorable Substitute

Yea 27 Nay 0 (03/07/2014)